



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 2244
Testimony of WaterWatch of Oregon
By Kimberley Priestley
Submitted to the House Water Committee
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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch supports HB 2244

HB 2244 would provide that the filing of a petition in either the circuit court or the Court of Appeals would not stay enforcement by the Oregon Water Resources Department to regulate off a junior diversion, appropriation or other use of water in favor of a senior determined claim, instream water right or a tribal water right or determined claim.

HB 2244 will put an end to a longstanding loophole in the law that allowed junior users to use the stay provision to avoid being regulated off in favor of senior rights, in this case senior instream rights, tribal rights and determined claims. This loophole has become increasingly popular in recent years, most notably in the Klamath Basin where junior water right holders are using this law to stall regulation of their water rights in favor of determined claims held by the Klamath Tribes.

The Oregon Water Code is built upon the prior appropriation doctrine, which has as a basic tenant "first in time first in right". This means that when water supplies run short, junior water right holders are shut off first. The loophole allowed by the existing stay provisions turns this principle on its head and allows junior water right holders to continue to use water regardless of the fact they are taking water to the detriment of senior water right holders. While existing law does provide that the OWRD can deny a stay, this takes time and resources and does not result in expedient regulation. Also, notably, any OWRD denial of a stay can then also lead to another automatic stay if challenged, resulting in an endless series of loopholes to regulation. As water management becomes increasingly complex in the face of climate change, it is critical that the legislature purge the statutes of loopholes that are increasingly being used as end runs around sustainable water management.

HB 2244 is a very narrow fix that focuses on stays as they relate to enforcement orders for determined claims, instream rights and tribal rights/determined claims; which is a change from past sessions where broader provisions were sought beyond enforcement. WaterWatch strongly supports the bill's focus on enforcement orders. Passing HB 2244 would not only better align Oregon statutes with the prior appropriation doctrine, but frankly, is a matter of basic fairness.

We urge the Committee to support HB 2244. Thank you for consideration of our testimony.

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